84-1114

Office-Supreme Court, U.S.
FILED
JAN 10 1985
ALEXANDER L. STEVAS,
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

WALTER LLOYD BLAIR
A Member of the Bar.....Petitioner

v.

COMMITTEE ON LEGAL ETHICS
Of the West Virginia State Bar..Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
WEST VIRGINIA SUPREME COURT

Walter Lloyd Blair, pro se
BLAIR & ASSOCIATES
Professional Building
Suite 2A
114 West Washington Street
Charles Town, WV 25414
(304) 725-9736

***** APPENDIX *****

APPENDIX A

The Committee on Legal Ethics
of the
West Virginia State Bar

v.

Walter Lloyd Blair, a member
of the
West Virginia State Bar

No. 16368

OPINION

At a regular term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 17th day of October, 1984, the following order was made and entered, to-wit:

The Court having maturely considered the verified complaint praying for the suspension of the license to practice law of Walter Lloyd Blair for a period of one (1) year, together with the original Report of The Committee on Legal Ethics, as provided by part D, Article VI of the By-Laws, Rules and Regulations of the West Virginia State Bar; the transcript of

the formal hearing held before the Committee on Legal Ethics on February 17 and 18, 1984; the Findings and Recommendations of said committee and the various pleadings and exhibits filed with the Committee; the rule awarded thereon; and upon the agrument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that the respondent, Walter Lloyd Blair, has been guilty of professional misconduct, and his license to practice law in the State of West Virginia should be suspended for a period of six months.

Accordingly, it is therefore adjudged and ordered that this license and authority of the respondent, Walter Lloyd Blair, to practice law in the State of West Virginia, be, and the same is hereby, suspended for a period of six months effective at the close of

business on November 16, 1984, at the expiration of which the respondent may petition this Court for reinstatement pursuant to the provisions of Part F, Article VI of the By-Laws of the West Virginia State Bar.

The syllabus of points adjudicated, prefixed to the written opinion prepared by Justice Neely, was concurred in by Chief Justice McHugh and Justices Harshbarger, Miller and McGraw.

The Clerk of this Court is hereby directed promptly to certify a copy of this order to the Secretary of The West Virignia State Bar, pursuant to Section 32 of Article VI of the By-Laws of The West Virginia State Bar, and a duly attested copy of this order shall be mailed to the defendant, with return receipt requested, as due and sufficient notice of the contents hereof, and to

counsel of record in this proceeding.

A True Copy

Attest: _____
Clerk Supreme Court of
Appeals

COMMITTEE ON LEGAL ETHICS
OF THE
WEST VIRGINIA STATE BAR

v.

WALTER LLOYD BLAIR

Attorney Disciplinary Proceeding
License Suspended

Neely, Justice

1. "In an attorney disciplinary proceeding based on a complaint charging professional misconduct and prosecuted by the Committee on Legal Ethics of the West Virginia State Bar for publicly reprimanding the attorney and for suspending the license of the attorney to practice law, the burden is on the Committee to prove the charges contained in the complaint by full, clear and preponderating evidence." Syl. Pt. 2 of Committee on Legal Ethics v. Daniel 160 W.Va. 388, 235 S.E.2d 369 (1977).

2. A West Virginia lawyer, admit-

ted pro hac vice to the Bar of another state, remains subject to the West Virginia State Bar's jurisdiction.

3. This Court is the final arbiter of legal ethics problems and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law.

Neely, Justice,

The Committee on Legal Ethics of the West Virginia State Bar has petitioned this Court to suspend Walter Lloyd Blair from the practice of law for one year. Disciplinary action is sought on two counts. First, the Committee found that Mr. Blair attempted to obstruct justice by suggesting to a witness that she not appear at trial. Second, the Committee found that Mr. Blair failed to assist counsel who replaced Mr. Blair after Mr. Blair

withdrew from a case.

This Court, upon review of the record, finds Mr. Blair guilty of obstructing justice in violation of DR 1-102(A) (3)-(6) and DR 7-109(A) and (B) of the Code of Professional Responsibility of the West Virginia State Bar. However, we find that the Committee has not met the burden of proof concerning the charge of failure to assist successor counsel. For reasons that we will set forth below, we have decided to reduce the time of Mr. Blair's suspension from the recommended year to a period of six months, but in addition to that suspension, we order that Mr. Blair be confined to the practice of law in the State of West Virginia under the supervision of a lawyer acceptable to the West Virginia State Bar for a period of three years after his reinstatement.

BEST AVAILABLE COPY

I

Walter Lloyd Blair is a West Virginia lawyer whose office is in Charles Town, West Virginia, but who lives in Montgomery County, Maryland. Although Mr. Blair is not a member of the Maryland Bar, on numerous occasions he has appeared in Maryland courts pro hac vice. Indeed the difficulties into which Mr. Blair has so tragically cast himself derive from his representations to his Maryland neighbors that he is "their neighborhood attorney" or, on at least one ocasion, a partner in a Baltimore law firm!

One of Mr. Blair's Montgomery County neighbors, Mrs. Mary Chambers, the complainant, retained Mr. Blair in July of 1980 to represent her daughter, Kimberly, in a juvenile matter. Cumulatively, Mrs. Chambers paid Mr.

Blair $800 in connection with the representation of ner daughter. Mr. Blair withdrew as Kimberly's counsel eight months later, a few days before Kimberly's trial.

In December, 1980, Mrs. Chambers was subpoenaed to testify about a child abuse incident involving a family named Chung who lived opposite her. The hearing was scheduled for 9 February 1981 and Mrs. Chambers was a witness for the prosecution. As it turned out, Mr. Blair was counsel for Mr. Chung, the defendant.

On 6 February 1981, the weekend before the child abuse hearing, Mrs. Chambers called Mr. Blair from her Washington,D.C.office. Mrs. Chambers did not telephone Mr. Blair for any reason connected with the Chung prosecution, but rather because she had been informed that Mr. Blair had made

indiscreet inquiries of their mutual neighbors concerning her daughter, Kimberly's, chastity. In the course of this conversation, made in the presence of two of her fellow employees, Mrs. Chambers learned that Mr. Blair was representing Mr. Chung. She was then advised by Mr. Blair to feign illness and absent herself from court on the day of the abuse hearing. This, Mr. Blair assured her, would assuage her conscience because otherwise she would blame herself later if neighbor Chung were imprisoned, leaving his family fatherless. Mr. Blair stated, however, that he couldn't tell her what to do since as a lawyer it was incumbent on him to be "cautious." Two witnesses testified to this conversation, and one of them corroborated Mrs. Chambers' final response: "Blair, I'll be there,

I won't be sick on Monday."

Infuriated and somewhat shaken by her attorney's suggestions, Mrs. Chambers telephoned the victim witness coordinator for the state's attorney in Montgomery County, Ms. Janet Webb. Ms. Webb contacted Mrs. Chambers and convinced her to testify against Mr. Chung. Mrs. Chambers was the State's only witness.

On 17 February 1980, respondent Blair petitioned to witdraw as counsel for Kimberly Chambers, stating that Mrs. Chambers had wrongfully accused him of attempting to obstruct justice. The motion was granted and Mrs. Chambers obtained the services of Mr. Vincent Butler to represent her daughter in the pending juvenile case -- now only eight days from trial. Mrs. Chambers contacted Mr. Blair, at Mr. Butler's request, to obtain her daughter's file.

Although Mr. Blair agreed to relinquish Kimberly's file, no material was ever received by Mr. Butler. The juvenile court found Kimberly guilty of the charges and put her on probation in her mother's custody.

In March 1981, Mrs. Chambers lodged her complaints (obstruction of justice and failure to assist successor counsel) against Mr. Blair with both the Maryland and West Virginia State Bars. Mr. Blair argues at great length in his brief that Mrs. Chambers' allegations are entirely untrue and he insists that the only basis for these complaints is that Mrs. Chambers was displeased with him. Mr. Blair defends affirmatively by denying that the West Virginia State Bar has jurisdiction over this case. In addition, he insists that the lengthy disposition of these complaints has

prejudiced his defense of the charges.

The Maryland Attorney Grievance Commission did not act on Mrs. Chamber's complaint. However, contrary to Mr. Blair's assertion, the Grievance commission's failure to act was not a rejection of the complaint on its merits. In answer to Mr. Blair's query about his case, the Assistant Bar Counsel of the Maryland Commission stated:

> No complaint file was opened in this office, nor will one be open since you have advised me that you are a member of the West Virginia Bar and not a member of the Maryland Bar. This office only has jurisdiction over complaints involving Maryland attorneys. Therefore, we will take no further action in this matter.
> Respondent's Exhibit No. 3

We assume that the Attorney Grievance Commission in Maryland expected, as it had every right to expect, that the West Virginia State Bar would investigate and

dispose of this case. [1]

II

Maryland's summary rejection of the complaint does not constitute, as Mr. Blair argues, an adjudication of the matter that would, in any way, deprive the West Virginia State Bar of its jurisdiction over him. All lawyers who practice under a West Virginia license are subject to the jurisdiction of the West Virginia State Bar -- whether they practice within or without our State.

Although the complaints against the respondent were filed in March 1981, no hearing was held until February 1984. Mr. Blair maintains that he has suffered serious harm by the delay in disposing of this case. He says he "could not even remember crucial activities to defend his case" and that he was unable to locate witnesses who could offer evidence on his behalf. This Court has

no comment on Mr. Blair's lose of memory, but notes the dearth of any evidence indicating Mr. Blair's case would be improved by the testimony of any absent witnesses.

Notwithstanding the State Bar's apparent delay in dealing with this complaint, the Court does not find "that the delay resulted in prejudice or disadvantage to the respondent - attorney." Syl. Pt. 1 of Legal Ethics Committee v. Pence, ___W.Va.___, 240 S.E.2d 668, 93 A.L.R.3d 1036 (1977). Other than the irritation caused by the delay, Mr. Blair does not provide any evidence of harm to his ability to defend. Indeed, much time was lost through myriad complainants, notices, petitions, etc., by which Mr. Blair attempted to prolong this matter. The evidence against him remains unrebutted,

undenied and unchanged despite the passage of time.

This Court, however, must register its discomfort with the extraordinarily long time the State Bar took to complete its action on this complaint. In this regard we would note that public confidence in the West Virginia Bar can hardly be nourished if it habitually takes three years for an ethics violation to be reported, investigated and adjudicated. Such delay may not only be prejudicial to the lawyer who is charged, but also, and more importantly, delay is always prejudicial to the public whom we are here to protect.

III

"In an attorney disciplinary proceeding based on a complaint charging professional misconduct and prosecuted by the Committee on Legal Ethics of the West Virginia State Bar for publicly

reprimanding the attorney and for suspending the license of the attorney to practice law, the burden is on the committee to prove the charges contained in the complaint by full, clear and preponderating evidence." Syl. Pt. 2, Committee on Legal Ethics v. Daniel, 160 W.Va. 388, 235 S.E.2d 369 (1977). This Court finds that the Committee has met the burden with regard to the charge of obstructing justice.

Four witnesses testified under oath about the telephone conversation of 6 February 1981 between Mrs. Chambers and Mr. Blair. The respondent did not even deny the charges under oath, but, chose, instead to impugn Mrs. Chamber's character and to defend on a variety of collateral, and entirely inconsequential, matters.

Mr. Blair never took the witness

stand in his own defense and did not assert his Fifth Amendment privilege not to incriminate himself. This situation, thus, is not analogous to Spevack v. Klein, 385 U.S. 51 (1967) where the Supreme Court stated that the dishonor of disbarament could not be imposed on an attorney as his price for asserting the Fifth Amendment. Indeed, throughout the hearing Mr. Blair stated he might testify should he deem it to be necessary; he did not. Therefore, we have a situation in which the uncontroverted deposition or live testimony of four witnesses, under oath, show an attempt by Mr. Blair to prevent Mrs. Chambers from testifying. Mr. Blair counters this evidence simply by dismissing the incident in his brief as never having occurred. His statements in his brief to this Court, however, do not rise to the level of sworn rebuttal testimony.

Consequently, this Court has before it a clear and convincing prima facie case of witness tampering that is entirely unrebutted.

The Committee on Legal Ethics has not, however, satisfactorily demonstrated Mr. Blair's refusal to assist Kimberly's lawyer after Mr. Blair withdrew from her case. Mr. Blair argues that he was unable to enter the juvenile court records to obtain evidence of his work product. Certainly Mr. Blair should have turned over whatever relevant material he possessed to Mr. Butler. However, we note that Mr. Butler never asked Mr. Blair for the file nor is there any allegation that Kimberly's defense was impaired by its absence. Accordingly, the evidence is insufficient to take disciplinary action against Mr. Blair for neglecting the

interests of a client and for failure to represent a client zealously.

IV

This Court is the final arbiter of legal ethics problems and "must make the ultimate decision about public reprimands, suspensions or annulments of attorneys' licenses to practice law." In re L.E.C., ___W.Va.___, 301 S.E.2d 627, 629 (1983); State ex rel. Sowa v. Summerville, ___W.Va.___, 280 S.E.2d 85 (1981); W.Va. Code 51-1-4a(c) (1945). Thus, while according respect to the recommendations of the Committee on Legal Ethics, we remain free to mould the sanction. We have stated that:

> In disciplinary proceedings, this Court, rather than endeavoring to establish a uniform standard of disciplinary action, will consider the facts and circumstances in each case, including mitigating facts and circumstances, in determining what disciplinary action, if any is appropriate...Syl. Pt.2,

Committee on Legal Ethics, Etc. v. Mullins, 159 W.Va. 647, 226 S.E.2d 427 (1976)

We infer from the totality of the evidence before us in this case that Mr. Blair is using his West Virginia license to practice in Maryland through all-too-frequent pro hac vice requests to the Maryland Courts. By so doing Mr. Blair has not had the benefit of the stimulation and education that he otherwise would have had from his peers at the West Virginia Bar. At the same time his lack of membership in the Maryland Bar has made it impossible for him to share in the collegiality of lawyers ther. Despite promises to do so, Mr. Blair has not sought admission to the Maryland Bar, yet implies to potential clients that he is indeed a Maryland lawyer.

Mr. Blair's conduct in obstructing justice displays either a cavalier

disregard for, or an alarming ignorance of, the Code of Professional Responsibility that the members of the West Virginia State Bar are expected to follow. We find that the one year suspension of Mr. Blair's license to practice law, as recommended by the Committee on Legal Ethics, is justified, but we prefer instead to use this opportunity to help Mr. Blair expand his own knowledge about lawyering in general and the ethics governing law practice in particular rather than simply sanctioning him.

Accordingly, this Court declines to adopt the Bar's recommended one year suspension and, in its stead, imposes only a six-month suspension as part of the penalty. We add, however, that after his suspension, Mr. Blair be confined to practicing law in West

Virginia for a period of three years. During these three years he shall remain under the supervision of a West Virginia lawyer willing to assume total responsibility for his conduct. This lawyer must be acceptable to the West Virginia State Bar. Mr. Blair may nominate this lawyer to the West Virginia State Bar at any time while his license is suspended so that he may resume practice immediately upon his reinstatement. The State Bar will have thirty days to notify Mr. Blair whether it rejects his supervising lawyer.

During this three year period of supervision, Mr. Blair may not enter any foreign court pro hac vice or accept any fee from an out-of-state client for any legal advice or representation concerning a matter beyond our borders. His clients, may, however, be West Virginia residents soliciting advice on

matters that arise outside of West Virginia or nonresidents with legal problems in West Virginia. In light, however, of Mr. Blair's current circumstances we decline to award costs to the State Bar.

For the above reasons, the license to practice law of Walter Lloyd Blair is suspended.

License Suspended.

Committee on Legal Ethics
of the
West Virginia State Bar

v.

Walter Lloyd Blair

At a regular term of the Supreme Court of Appeals continued and held at Charleston, Kanwha County, on the 15th day of November, 1984, the following order was made and entered, to-wit:

This day came the petitioner, Walter Lloyd Blair, pro se, and presented to the Court his motion in writing for a suspension of the execution of the judgment of this Court entered on October 17, 1984, suspending his license to practice law in the State of West Virginia for a period of six months effective at the close of business on november 16, 1984, and imposing other restrictions therafter, pending an application to the Supreme Court of the United States for an appeal or writ of certiorari to the final

judgment of this Court.

Upon consideration whereof the Court is of opinion to an doth grant said motion. It is therefore considered and ordered that the execution of the judgment entered on October 17, 1984 be suspended for a period of sixty days from November 16, 1984, in order to permit the aforesaid petitioner to apply to the Supreme Court of the United States for an appeal or writ of certiorari: Provided, that the aforesaid suspension shall become effective at the close of business on January 15, 1985, in the event that no application to the Supreme Court of the United States is made, or at the expiration of thirty (30) days from the entry of an order by that Court denying said application.

A True Copy
Attest: _____
Clerk Supreme Court of Appeals

THE DISTRICT COURT OF MARYLAND FOR MONTGOMERY COUNTY SITTING AS A JUVENILE COURT

Matter of: Kimberly S. Chambers
Case No.: 1423-80

MOTION FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEY UNDER RULE 20 OF THE RULES GOVERNING ADMISSION TO THE BAR

PAUL J. McGARVEY, Attorney of record in this case, moves the court to admit, for the limited purpose of appearing and participating in this case as co-counsel with the movant, WALTER LLOYD BLAIR, of 8812 Lanier Drive, No. 203, Silver Spring, Maryland 20910, an out-of-state attorney who is a member in good standing of the Bar of West Virginia.

PAUL J. McGARVEY

7676 New Hampshire Avenue
Suite 404
Langley Park, Maryland 20783
(301) 434-7377

CERTIFICATE AS TO SPECIAL ADMISSION

I, WALTER LLOYD BLAIR, certify on this

15th day of September 1980, that I have been specially admitted in the State of Maryland at no time during the preceding twelve months.

_____

Walter Lloyd Blair

THE DISTRICT COURT OF MARYLAND FOR
MONTGOMERY COUNTY
SITTING AS A JUVENILE COURT

Matter of: Kimberly S. Chambers,
Case No: 1423-80

ORDER

ORDERED, this 28th day of October, 1980, by the _____ Court for _____, Maryland that

WALTER LLOYD BLAIR, ESQ., is admitted specially for the limited purpose of appearing in this case as co-counsel for KIMBERLY S. CHAMBERS, and it is further ORDERED, that the Clerk forward a true copy of the Motion and of this Order to the State Court Administrator.

_____
Judge Douglas H. Moore

DISTRICT COURT OF MARYLAND, MONTGOMERY COUNTY

SIXTH DISTRICT - JUVENILE DIVISION

Kimberly S. Chambers
A Child under Eighteen years of age

JUVENILE DOCKET
NUMBER 1423-80

ORDER

Upon consideration of the Motion for Leave to Withdraw as Counsel and good cause appearing, It Is this 18th day of February, A.D., 1981,

ORDERED that the request to withdraw by present counsel for Kimberly S. Chambers is granted and a reasonable time or until the 2nd day of March, A.D., 1981, will be permitted to allow new counsel to be appointed, And It Is Further;

ORDERED that if new counsel has not filed an appearance with this Court on or before the above date, the Court will appoint an attorney to represent the

child and attorney's fees will be charged to the parents by the Court under Section 3-834, Courts and Judicial Proceedings Article.

Douglas H. Moore, Jr., Judge

ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND

November 4, 1981

PRIVATE AND CONFIDENTIAL

Robert H. Davis, Jr., Esquire
Bar Counsel
West Virginia State Bar
E-400 State Capitol
Charleston, WV 25305

RE: File No. 81-0-628
Walter L. Blair, Esq.

Dear Mr. Davis:

I am sorry it has taken me so long to get back to you regarding this matter, but I have been attempting to determine what action, if any, was taken by the Marayland Bar Association's Unauthorized Practice Committee. I have recently been advised that the Bar Association, after their investigation, referred this matter to the Attorney General of the State of Maryland for such action as he deems appropriate. There is no indication that any action

has been taken by the Attorney General's Office.

I am enclosing copies of the motions filed by Mr. Blair for special admission under Rule 20 for the cases of which I am aware. These motions appear to be in order. [Emphasis added].

I hope this information will be helpful to you in your determinataion. If I can be of any further assistance to you with regard to this matter, please do not hesitate to contact me.

Yours very truly,

Kendall R. Calhoun
Assistant Bar Counsel

KRC/kdm
Enclosures

15 U.S.C. §2. Monopolizing Trade
§2. Monopolizing trade a misdemeanor; penalty

Every person who shall moopolize, or attempt to monopolizc, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, or conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

18 U.S.C. §241. Conspiracy against rights of citizens:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or

laws of the United States, or because of his having so exercised the same;...They shall be fined not more that $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Maryland Code Annotated, Rule BV1: Discipline and Inactive Status of Attorneys

"Attorney" means any person admitted by the Court of Appeals to practice law. For purposes of discipline or inactive status, the term also includes a member of the bar of any other state, district, or territory of the United States who is employed as counsel in any case pending before any judicial tribunal or Orphans' Court sitting in this State, or before any administrative agency of this State, as defined in Rule B1b. (Emphasis added).

28 U.S.C. §1738. State and Territorial

statutes and judicial proceedings; full faith and credit:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto...Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. June 25, 1948, c. 646, 62 Stat. 947.

Constitution of West Virginia Art. 3 §4

No bill of attainder, expost facto law, or law impairing the obligation of a contract, shall be passed.

Constitution of West Virginia Art. 3 §5

Excessive bail shall not be required, nor excessive fines impopsed, nor cruel and unusual punishment inflicted. Penalties shall be proportioned to the character and degree of the offence. No person shall...be compelled to be a witness against himself, or be twice put in jeopardy of life of liberty for the same offence.

Constitution of Maryland Art. 17

That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no ex post facto Law ought to be made; nor any retrospective oath or restriction be imposed, or required.

Constitution of West Virginia Art. 3 §10
Safeguards for Life, Liberty and Property.

§10. No person shall be deprived

without due process of law....

U.S. Constitution, Amendment VI
Right to Speedy Trial, Witnesses, etc.

In all criminal prosecutions, the accused shall enjoy the right to a speedy [trial]...and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor....

U.S. Constitution, Amendment VIII
Bails, Fines, Punishments

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution, Amendment XIV
Citizenship Rights Not to Be Abridged by States.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1981
Equal rights under the law.

All persons within the jurisdictiono of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by wnihte citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. §1983
Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation,

custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Consititution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. §1985
Conspiracy to interfere with civil rights.

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office...or to injure any citizen in person or property...any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United

States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA

WALTER LLOYD BLAIR

v.

BRAUN A. HAMSTEAD and
ROCKY A. REEL, et al.

CIVIL ACTION NO.:
82-28-M
U.S. DISTRICT
COURT filed at
Martinsburg, WV
October 12, 1982
THOMAS F. STAFFORD
CLERK

COMPLAINT FOR DEFAMATION OF CHARACTER, HARASSMENT, INTIMIDATION, DISCRIMINATION BASAED ON RACE AND INJUNCTIVE RELIEF
COMPLAINT FOR DEFAMATION OF CHARACTER, HARASSMENT, INTIMIDATION, DISCRIMINATION BASED ON RACE AND INJUNCTIVE RELIEF

1. Jurisdiction is invoked pursuant to Title 28, U.S.C. 1343, 42 U.S.C. 1981, 42 U.S.C. 1983, and 42 U.S.C. 1985.

SUBPOENA
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA,
MARTINSBURG

Civil Action No.: 82-0028-M
Type of Case: [x] Civil
Subpoena for: [x] Person [x] Documemnts

Walter Lloyd Blair, Esquire
v.
Braun Hamstead, Esquire

TO: Robert Davis, Jr.
West Virginia Bar
E-400 State Capitol
Charleston, WV 25305

YOU ARE HEREBY COMANDED to appear in the United States District Court at the Place...

PLACE: Northern District of West Virginia, Martinsburg

COURTROOM: 2nd Floor

DATE AND TIME: November 28, 1984, at 9:00 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

Any and all records, records of telephone calls and conversation, physical data of communications between

Robert Davis-The West Virginia State Bar and Braun Hamstead of Jefferson County Prosecutor's office obtained or conducted between June 1981 through October 1982, regarding Plaintiff, Walter Lloyd Blair specifically, and communications in general including letters and reports...

U.S. Magistrate: E. Lowell Markey
(By) Deputy Clerk: L. Kaye Mallow

Attorney's name and address:
Walter Lloyd Blair, Esq.
BLAIR & ASSOCIATES
Attorneys at Law
114 W. Washington Street
Charles Town, WV 25414

[x] Plaintiff

IN THE SUPREME COURT OF APPEALS FOR THE STATE OF WEST VIRGINIA

COMMITTEE ON LEGAL ETHICS OF THE WEST VIRGINIA STATE BAR

Complaint,

vs. CASE NO.: 16368

WALTER LLOYD BLAIR, a member of the Bar

Respondent.

MEMORANDUM IN SUPPORT OF SECOND MOTION FOR RECONSIDERATION TO DISMISS; OR IN THE ALTERNATIVE TO GRANT A NEW HEARING PURSUANT TO RULES 2, 5, AND 7(B) WEST VIRGINIA SUPREME COURT RULES REGARDING NEWLY DISCOVERED EVIDENCE FROM D.C.'S BAR COUNSEL'S OFFICE

This is an action where Respondent, Walter Lloyd Blair, moves the West Virginia Court to reconsider[1] the suspension and conditions placed on his license by the West Virginia State Supreme Court pursuant to the original and two subsequently altered complaints

[1]See Mr. Blair's brief filed August 15, 1984.

on which the Court ruled on October 17, 1984, against Mr. Blair and ordered a six (6) month suspension coupled with three (3) restricted conditions placed on Mr. Blair's license. This ruling, in essence, disbars Mr. Blair for three and one-half (3 1/2) years since no lawyer will assume the role of supervising Mr. Blair, a condition ordered by the Court based on West Virginia Bar Counsel Davis' complaint. From this Order, Mr. Blair has sought a stay of the Court's suspension pending Writ of Certiorari which stay was granted on November 16, 1984. Respondent's Motion and Memorandum are submitted based on newly discovered evidence. The United States Supreme Court requires the petitioner to exhaust all State Court remedies as a prerequisite to seeking a Writ. This requested re-hearing may in fact dispose of the matter in Respondent's favor

since Respondent is likely to prevail on the merits.

FACTS

In April of 1980, Mr. Blair, a Black attorney, obtained his license to practice law in the State of West Virginia. He maintains his law office in West Virginia and resides in Maryland.

On February 6, 1981, an alleged telephone dispute occurred between Mr. Blair and Mary Chambers while Mr. Blair was her Counsel pro hac vice in Maryland. (Throughout the years, West Virginia Bar Counsel Davis led Mr. Blair to believe that this alleged telephone conversation occurred on February 9, 1981, and that complainant alleged unethical conduct was initiated by Mr. Blair. Mr. Blair knew this allegation to be factually impossible and false). Mr.

BEST AVAILABLE COPY

Blair was precluded from challenging Ms. Chambers' written complaint. In fact, at the Bar hearing on February 17, 1984, Mr. Blair was precluded from testifying where Mr. Davis and The Bar Tribunal jointly insisted that this was the Bar's complaint, not Mrs. Chambers'; and that she was merely the Bar's witness.

February 9, 1981, was the date claimed by West Virginia Bar Counsel Robert Davis in his complaint since June, 1981, through February 15, 1984, which date was an alibi date for Mr. Blair. That is, Mr. Blair, along with local counsel, all of Kingley Chung's witnesses, the State of Maryland's Assistant Attorney Ms. Webb with her many witnesses, including Mary Chambers, were in Maryland Court regarding Maryland v. Kingsley Chung. (Tr. 255)

On February 17, 1981, Mr. Blair moved to withdraw as counsel for Ms.

Chambers because of the claim made by Maryland State's Attorney Janet Webb on February 9, 1984, in Judge's Chambers that Mr. Blair allegedly attempted to obstruct justice, by allegedly advising Mrs. Chambers, State's witness, that she could be sick on trial date set for that day. (Tr. 255).

On February 18, 1981, the motion to withdraw, filed by Mr. Blair and local Counsel Mr. McGarvey, due to the obvious conflict regarding the juvenile case of Mrs. Chamber's daughter Kim, was granted sua sponte, without a hearing, by Maryland District Court Judge Moore.

In March 1981, Kim Chambers with new Counsel Vincent Butler, was found guilty by Judge Moore after trial on attempted robbery and assault and battery.

On March 24, 1981, Mrs. Chambers,

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mother of Kim, filed her fee dispute claim before the Maryland Attorney's Greivance Committee against Mr. Blair also alleging Mr. Blair made improper suggestions to her regarding the Chung case.

On April 29, 1981, Maryland Bar rejected Mrs. Chambers' complaint.

On June 22, 1981, West Virginia Bar Counsel Davis inquired of Mr. Blair to respond to the alleged February 9, 1981, call to Mrs. Chambers and advised Mr. Blair not to resubmit his previously submitted matters which were filed with Maryland Bar since Mr. Davis had a copy (including facts about Mr. Blair's business card reflecting full disclosure as West Virginia attorney.)

On July 27, 1981, Mr. Blair answered West Virginia Bar inquiry by denying in substance and specifically the Chambers allegation and by advising

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that all pro hav vice appearances were in order.

On September 1, 1981, Deborah Jarrell, by letter to West Virginia Bar Counsel Mr. Davis, advised, "On February 6, 1981, Mrs. Chambers telephoned Attorney Blair's office" (Mr. Blair did not visit our office). Further, **Ms. Jarrell's one page letter contained three (3) serious contradictions manifesting purgery or false swearing.** NEWLY DISCOVERED EVIDENCE ON DECEMBER 3, 1984, FROM D.C. COUNSEL SHIPP'S FILE.

On November 4, 1981, Maryland Bar Counsel Mr. Calhoun by letter to Bar Counsel Davis stated "after [Bar's] investigation no action was taken by Attorney General's office. Mr. Blair's pro hac vice "motions appear to be in order." NEWLY DISCOVERED EVIDENCE FROM MR. DAVIS AFTER WEST VIRGINIA BAR

HEARING OF FEBRUARY 17 AND 18, 1984, AND PURSUANT TO MOTIONS TO COMPEL DISCOVERY AND JENCKS MATERIALS.

On November 18, 1981, Mr. Blair requested a Legal Ethics Committee hearing in Charles Town, West Virginia, to resolve the Chambers matter once and for all.

On December 23, 1981, Mr. Blair wrote a four (4) page letter complaining to West Virginia Bar President Busch, about harassment by West Virginia Bar Counsel Davis, his incompetence and his failure to dismiss the frivolous case by Mrs. Chambers.

On October 8, 1982, two West Virginia State Troopers appeared in Mr. Blair's office to read him his Miranda warnings and question him on charge of intimidation of West Virginia State witnesses in the trial of State v. Porter. Porter was Mr. Blair's client.

Mr. Blair realized immediately that this was a conspiracy procured by Bar Counsel Robert Davis and Prosecutor Hamstead, et.al. Mr. Blair immediately prepared to file a civil law suit. These troopers were so advised.

PROOF OF CONSPIRACY TO INDICT ATTORNEY BLAIR

On October 12, 1982, Jefferson County Prosecutor Hamstead met with Bar Counsel Davis regarding Attorney Blair; for the purpose of filing an ethical complaint against Mr. Blair; and to discuss indicting Blair on intimidating two white male witnesses for the State in State v. Porter, in which Mr. Blair was Court Appointed Defense Counsel. EVIDENCE OF THIS MEETING IS NEWLY DISCOVERED EVIDENCE.

On October 12, 1982, Mr. Blair filed a five million dollar suit

instinctively realizing the conspiracy between Bar Counsel Davis and Prosecutor Hamstead particularly when considering the bias and racism exemplified by Prosecutor Hamstead toward Mr. Blair throughout the previous year. See Blair v. Hamstead, et al. (N.D.W.Va. Civ. No. 82-0028-M).

On October 14, 1982, Mr. Blair was indicted on two counts of intimidating Rocky Rell and Robert Carter, state's witnesses. This was procured **pursuant to a secret and special grand jury and** with the help of Rell's attorney, **William Martin, who vouched for Rell's character before the Grand Jury.** Mr. Blair was not afforded a hearing on probable cause before a Magistrate as is customary.

On March 29, 1983, **[JUDGE RECUSED].** The criminal trial of Mr. Blair was constructed such that the notorious Circuit Judge Pierre E. Dostert would

preside over the trial State v. Blair. **HOWEVER, JUDGE DOSTERT WAS RECUSED DUE TO PREJUDICIAL AND RACIAL BIAS** MANIFESTED BY SAID JUDGE WHERE THE JUDGE INSINUATED THAT MR. BLAIR AND ALL BLACK ATTORNEYS WERE APES AND MONKEYS WHEN HE SAID **"THEY [BLACK ATTORNEYS] ARE PULLED OUT OF TREES"..."THEY PUT SUITS ON THEIR BACKS"..."AND CALL THEMSELVES ATTORNEYS".** See testimony of Attorney James Rich at the Judge's recusal hearing. [State v. Blair, No. 82-M-6 and 7, Jefferson County West Virginia]. Mr. Blair subsequently filed a one million dollar federal law suit against the said Pierre Dostert. [N.D.W.Va. Civ.No. 83-0014-M] Judge Dostert was subsequently removed from the bench in 1984 on non-related matters.

June 13, 1983, West Virginia Assistant Bar Counsel Jack Rogers

defamed Mr. Blair in Maryland. Mr. Blair's neighbors filed affidavits complaining about Mr. Rogers.

August 17, 1983, Mr. Blair was convicted on both counts of intimidation. Bar Counsel Davis immediately moved to disbar Mr. Blair.

October 4, 1983, Mr. Blair's Motion for New Trial on basis of abusive prosecution was granted. Prosecutor Hamstead and staff were removed from the case for improper behavior prior to the indictment of Mr. Blair. Mr. Davis terminated West Virginia Bar's petition to disbar Mr. Blair.

On December 13, 1983, West Virginia Bar Counsel Davis serves notice of Charlie King's deposition in Washington, D.C., regarding Chambers complaint. The deposition went forward conducted by D.C. Bar Counsel Wallace Shipp with his own questions after refusing Bar Counsel

Davis' improper suggestions. Shipp stated "they were improper after considering my [Shipp's] seven (7) years as prosecutor [or previous practice]". Mr. Shipp said, "I will testify for you if necessary". NEWLY DISCOVERED EVIDENCE ON DECEMBER 3, 1984, FROM MEETING WITH D.C. BAR COUNSEL SHIPP.

WEST VIRGINIA BAR'S COMPLAINT NO. 1

On December 13, 1983, Bar Counsel Davis, via Chairman Kizer, mailed the West Virginia Bar's complaint which was received opened and delivered by Sheriff under questionable circumstances of Breach of Confidentiality. [The Sheriff's deputy was a witness against Mr. Blair in State v. Blair] In pertinent part the complaint stated:

On February 9, 1981, Respondent Blair contacted Mrs. Chambers at her place of work and suggested that she

absent herself from the Courtroom on the following day, Febuary 10, 1981. Mrs. Chambers repeated this to Charlie King, Deborah Jerrell, [and among others], Maryland Assistant State's Attorney Ms. Webb.

On December 21, 1983, Charlie King testifies on deposition. [Mr. Blair was absent]:

QUESTION BY D.C. COUNSEL SHIPP:

(King Dep.p.5)

Q. Why do you remember that phone call?

A. Well, because she was quite upset; and after she got through talking to the gentleman, WHOEVER HE WAS, she hung up and I asked her, you know, what was wrong; and she said she had retained a lawyer and that he wasn't doing what she paid him to do. I suggested that she change lawyers and try to get her money back or something.

(King Dep. p.6)

Q. Did she indicate she was unhappy

with the attorney?

A. Yes, she was unhappy with the attorney.

Q. Did she say why?

A. He wasn't doing what she asked, what she thought he would do for her.

Q. DID SHE SAY ANYTHING ABOUT ANY REQUESTS THAT HE HAD MADE TO HER?

A. NO, SHE DIDN'T.

Q. WAS THERE ANYONE ELSE PRESENT WHEN THE TWO OF YOU WERE TALKING?

A. NO. (Emphasis added).

On January 5, 1984, West Virginia Bar Counsel Davis set the Deposition of Deborah Jarrell, a Maryland resident, in D.C. Bar Counsel's office for January 25, 1984, without prior consent or consideration for Mr. Blair.

On January 12, 1984, Attorney Blair filed opposition to taking of Jarrell's deposition in D.C. contending it was

without medical or financial excuse, without justification, outside the state of West Virginia, for purpose of defaming Attorney Blair in the District of Columbia.

On January 18, 1984, Mr. Davis filed Motion for Authorization to Cancell Jarrell's deposition. Mr. Davis wrote a letter to West Virginia Bar Tribunal requesting prompt ruling "so that we can make last minute arrangements to hold or to cancel the evidentiary deposition of Deborah Jarrell and Sherry Vance". Copy of this letter was mailed to Mr. Blair.

On January 23, 1984, Attorney Blair left his office after 5:00 p.m. without receiving a ruling on Bar Counsel's request to cancel Ms. Jarrell's deposition.

On January 24, 1984, Attorney Blair's office and most businesses in

Jefferson County, the Eastern Panhandle, and the Washington Metropolitan area, were closed due to a severe snow storm throughout the night of January 23, 1984 and part of January 24, 1984.

DENIAL OF DUE PROCESS

On January 25, 1984, Attorney Blair arrived in his office after 10:00 a.m. due to dangerous road conditions on Route270 and Route 340 travelling from Maryland to his West Virginia law office. On Mr. Blair's answering service was a telephone message advising that Mr. Davis was proceeding with Ms. Jarrell's deposition at 10:00 a.m. January 25, 1984, in Washington, D.C. Dueto bad weather, this was a two hour trip back through Maryland to Washington,D.C. Hence, Attorney Blair was unable to attend due to insufficient notice and inclement weather. Mr.

Davis, notwithstanding his knowledge of Ms. Jarrell's letter dated September 1, 1981, reflecting Ms. Chambers alleged dispute with her attorney on Febuary 6, 1981, misrepresented Deponent's previous letter by asking Ms. Jarrell to testify about the telephone conversation on February 9, while Mrs. Chambers was at work, inter alia [this was procured to induce Mr. Blair to defend against false dates, times and events and to justify Mr. Davis' misdrafted complaint]. (Jarrell Dep. p. 6)

QUESTIONS BY WEST VIRGINIA BAR COUNSEL ROBERT DAVIS:

Q. All right. On or about February the 9th, 1981, were you at work at the same time as Mary Chambers?

A. Yes, I was. [This is false since Mr. Blair and Mrs. Chambers were in Court regarding State v. Chung trial].

Q. Do you have a recollection of Mary

Chambers receiving a telephone call on that date and reacting to that telephone call? [Totally improper question].

A. Yes, I do. [Totally false.]

(Jarrell Dep. p.8)

Q. Did you overhear what she said into the telephone at that time?

A. Well, the main thing, the thing that sticks in my mind was that she was saying, "Blair, I'll be there. I won't be sick on Monday."

Q. Okay. All right. At the time, again, of this telephone conversation, do you recall whether there were other employees close around you and Mrs. Chambers?

A. If I remember correctly, just about everyone that was in the office at the time came back, because that's how loud, you know, she was. (Jarrell Dep. p. 9)

Q. What number of people would that be?

A. Well, I'd say at least six. (Emphasis added)

[THE OBVIOUS QUESTION IS, **how is it that no one else heard this other than Deborah Jarrell.** Charlie King supposedly was the first in time and place. **He denies such a statement by Mrs. Chambers.] (King Dep. p.6)**

SERIOUS CONTRADICTIONS

It is important to note that Charlie King, also a witness for Ms. Chambers, not only disputes and contradicts Ms. Jarrell's testimony, but conclusively denies that she was present. See Kings deposition pages 4-7 then see Jarrell's deposition page 6-8.

On January 30, 1984, Attorney Blair files Motion to Suppress Ms. Jarrell's deposition. It was never ruled on.

WEST VIRGINIA BAR'S ALTERED COMPLAINT NO. 2

On February 15, 1984, one business

day before the Bar hearing, Mr. Davis served attorney Blair with an amended complaint changing dates and events of the alleged unethical conduct including February 6, 1981, which robbed Attorney Blair of his alibi defense and any witnesses who could have explained Mr. Blair's whereabouts after Mr. Blair's memory had faded due to tne three (3) years which had passed. The amended complaint again indicated that Attorney Blair telephoned Ms. Chambers at work to persuade her not to testify against Chung. (The amended complaint [via testimony at the West Virginia Bar hearing] on February 17, 1984 now stressed that Ms. Chambers was a subpoenaed witness. This fact was unknown to Mr. Blair. However, it was too late for Mr. Blair to prove his lack of knowledge and further defect in the complaint. Here again, West Virginia Bar Counsel was

erroneously interpreting Maryland rules and procedures in his attempt to prove West Virginia ethics violation, e.g., **there was no list of state's witnesses served by the Maryland attorney in State v. Chung.)** See file in Rockville, Maryland. The substance of the complaint is that Attorney Blair deliberately and intentionally instigated a telephone call to procure Ms. Chamber's absence from Court in the Chung case. This was proven false by Mrs. Chambers herself when she denied the same in her testimony on February 17 and 18, 1984, at the West Virginia Bar hearing. (Tr. 184-189).

On February 17, 1984, Attorney Blair filed his answer to the amended complaint, denied such allegations specifically and generally and requested dismissal with prejudice. While the

unjust and illegal criminal re-trial was hanging over Mr. Blair's head, that is, the two trumped-up indictments for allegedly intimidating two white men in the trial of State v. Porter, the following activities were first presented to Mr. Blair:

DENIAL OF DUE PROCESS

(a) Deborah Jarrell's Deposition was delivered to Mr. Blair for the first time that morning minutes before the beginning of LEC v. Blair.

(b) Ms. Chambers confessed that she called Mr. Blair. Mr. Blair did not call her on Febuary 6, 1981, or on February 9, 1981. (Tr. 184-189).

(c) Ms. Chambers testified that she called Attorney Blair [to accuse him] because a boy in the neighborhood allegedly told Kim Chambers, the daughter of Ms. Chambers, that Mr. Blair

was asking questions about Kim's sexual behavior in the community.

(d) Ms. Chambers on cross-examination testified that Mr. Blair did not tell her **not** to testify in the Chung case; (Tr. 188) and he did **not** tell her he would withdraw from her daughters's case if she testified and Mr. Blair did **not** threaten her **or** offer her money not to testify against her neighbor Mr. Chung.

(e) Ms. Chamber testified that she called to argue with Mr. Blair and that she wanted one half (1/2) of her money back; i.e., the legal fee she paid Mr. Blair. (Tr. 184). Over the years, Mr. Blair has consistently claimed Mrs. Chamber owes him in excess of $1,000.00 in attorney fees. See answers filed with Maryland and West Virginia Bars.

DUE TO OBVIOUS CONSPIRACY, SURPRISED TESTIMONY AND INSUFFICIENT EVIDENCE MR. BLAIR DID NOT TESTIFY

On February 17, 1984, the West Virginia Bar hearing LEC v. Blair began. Mr. Blair did not testify regarding Count One. Due to the obvious defects in the complaint as to dates; time; lack of initiation by Attorney Blair; obvious motives to lie by Ms. Chambers; total contradictions of Ms. Jarrell's deposition by Mr. King's deposition including the absence of Ms. Jarrell from the scene at the time of the alleged telephone call; testimony of witnesses against Ms. Chambers; and Ms. Chambers' own statements exonerating Attorney Blair, Mr. Blair chose to rely on his 5th Amendment rights particularly when Mr. Blair considered the conspiracy to disbar him.

5th AMENDMENT INVOKED

On February 17-18, 1984, the 5th Amendment rights were invoked by Mr. Blair as to Count One due to the obvious ulterior motives of Bar Counsel Davis regarding his involvement with the two existing indictments and the up coming criminal trial against Attorney Blair. Due to Mr. Davis' previous attempt to disbar Mr. Blair and, of course, due to the existing and massive alterations of the West Virginia Bar's Complaint and inherent weakness of the instant alleged unethical conduct by Attorney Blair, i.e., LEC v. Blair, Mr. Blair declined to testify.

On February 17, 1984, Mr. Blair did not testify because he knew he was a victim of "entrapment" particularly reflecting on Count Two of the complaint which indicated Mr. Blair failed to assist Ms. Chamber's new counsel after

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motion to withdraw was granted sua sponte by a Maryland District Court Judge without affording a hearing. This count was destroyed by Vincent Butler's testimony. He was appointed by the Court as Ms. Chamber's new attorney without notice to Mr. Blair or local Maryland counsel. He testified he did not call or write Mr. Blair for any information or Mr. Blair's file. Further, the role of local counsel for Mr. Blair was never questioned by West Virginia Bar as to his responsibility as a Maryland counsel. [The West Virginia Supreme Court subsequently dismissed Count II after argument.]

On March 27, 1984, Mr. Blair was re-tried by a jury and acquitted of the two intimidation charges.

WEST VIRGINIA BAR'S ALTERED COMPLAINT NO. 3

On July 16, 1984, the matter of Ms.

Chamber's complaint was filed before the West Virginia Supreme Court of Appeals on the West Virginia Bar's third altered complaint. The Bar requested one (1) year suspension on Mr. Blair's license. There was no opportunity to testify or produce witnesses for Mr. Blair regarding this third altered complaint **substantially changing events, dates, activities of parties, adding hearsay depositions and a build-up regarding Mrs. Chambers as a Maryland subpoenaed witness.**

On October 17, 1984, the West Virginia State Supreme Court by order reduced the period of suspension to six (6) months, but attached three (3) serious conditions on Mr. Blair's license following the six (6) months suspension as follows:

(a) Mr. Blair must first obtain an attorney willing to supervise

him for three (3) years;

(b) This attorney must be a West Virginia attorney approved by the West Virginia Bar;

(c) Mr. Blair may not appear pro hac vice or earn money as a lawyer outside the State of West Virginia for a period of three (3) years.

On October 17, 1984, the determinative factors in the courts finding of unethical conduct were:

(a) The complaint of Ms. Chamber which centered around the (alleged) telephone call, (even though now admittedly initiated by Ms. Chambers), was meritorious.

(b) Ms. Jarrell's deposition corroborated the testimony of Ms. Chambers.

(c) Mr. Blair did not testify. His silence was insufficent to invoke

the 5th Amendment rights against self-incrimination. (These rights were claimed by Mr. Blair and supported by factual circumstances and Federal and State Law.) See McGraw v. West Virginia Judicial Review Board, 264 S.E. 2d 168 (1980), [cite added] regarding the right to discovery and Spevack v. Klein 385 U.S. 511 (1967), cited by Mr. Blair in brief, regarding the attorney's right to the 5th Amendment protection. The Court offered to distinguish Klein by pointing out that Mr. Blair should have taken the stand and stated he intended to invoke the 5th Amendment.

STAY OF SUSPENSION PENDING WRIT OF CERTIORARI

On November 16, 1984, the West Virginia Supreme Court granted Mr. Blair a stay of suspension pending intent to file Writ of Certiorari to the United States Supreme Court on the matter.

On November 19, 1984, Mr. Blair's lawsuit against Judge Dostert for defamation and racism [N.D.W.Va. Civ. No. 83-0014-M] was settled out of court avoiding a Federal Jury trial. The jurisdictional basis was diversity of citizenship.

On November 28, 1984, Attorney Blair's amended fifteen million dollar lawsuit against Prosecutor Braun Hamstead, his law partner and Assistant Prosecutor Melonie Gaidrich, [and the two men who claimed they were intimidated] Robert Carter (a felon) and Rocky Rell (a known villian), all of whom are white citizens of West Virginia, was tried in Federal Court before a jury on Diversity of Citizenship; 42 USC §§ 1981, 1983, and 1985; seeking damages for race discrimination; violations under Color of State law; conspiracy; malicious prosecution;

defamation of character; intentional infliction of emotional distress and negligence. At the end of Attorney Blair's case in chief the trial Judge dismissed 42 USC § 1981 and § 1985 (conspiracy), dismissed Rell andCarter (the two who falsely accused Mr. Blair of intimidating them in State v. Porter); dismissed diversity of citizenship (notwithstanding the existence of diversity of citizenship) thereby dismissing all the pendent claims for malicious prosecution, inter alia and allowed the matter to go to a jury on 42 USC § 1983, while reiterating "the prosecutor is absolutely immune from liability", Embler v. Pachtman, 42 U.S. 409 (1976), notwithstanding Elliott v. Perez, 561 F.Supp. 1325(1983), inter alia submitted by Mr. Blair on qualified immunity. The Federal Court, however,

Now that all testimony is in, except for Mr. Blair's testimony, it is clear that West Virginia Bar Counsel's complaint was grossly misleading, abusive and amounted to gross miscarriage of justice in violation of Mr. Blair's right to due process, equal protection under the law and rights pursuant to the West Virginia Constitution, the District of Columbia rules and law and the United States Constitution and laws.

MCGRAW V. WEST VIRGINIA JUDICIAL REVIEW BOARD
264 S.E. 2d. 168 (1980)

An analysis of this case justifies reversal in Mr. Blair's favor. Mr. Blair subpoenaed Bar Counsel Davis' files and filed Discovery Motions between December 12, 1983, through February 17, 1984, and to take Mr. Davis' Deposition to prove: conspiracy; prejudice from incrdinate delay; lack of

gave Attorney Blair leave to refile his multi-million dollar claims for damages against said defendants in the State of West Virginia Circuit Court on claims of malicious prosecution, inter alia.

On November 29, 1984, the jury returned a verdict for Defendants Hamstead and his assistant Melonie Gaidrich.

On December 5, 1984, Mr. Blair filed his Notice of Intent to Appeal the judgment in Blair v. Hamstead to be heard in the United States 4th Circuit in Richmond, Virginia.

NEWLY DISCOVERED EVIDENCE

On December 3, 1984, Attorney Blair met with D.C. Bar Counsel Shipp and for the first time, by obtaining a xerox copy of D.C. counsel's entire file concerning West Virginia State Bar v. Blair, he was able to prove what he had claimed all along regarding West

Virginia Bar Counsel Davis improper handling of the ethics case number 81-16, and that the case should have been dismissed for abuse of discretion, denial of due process, lack of merit and for the following reasons:

(a) Mrs. Jarrell's letter of September 1, 1981, told Mr. Davis that Ms. Chambers allegedly called Mr. Blair in his office on February 6, 1981. (Blair did not visit Ms. Chambers). [Further, Ms. Jarrell's letter contained three (3) major contradictions known to West Virginia Bar Counsel Davis, but excluded from Mr. Blair.] Accordingly, Mr. Davis grossly abused his discretion and authority and his conduct reflected reckless disregard for the true of his own case, when he falsely and fraudulently drafted the complaint particularly paragraph 9, inter alia,

indicating on February 9, 1981, Attorney Blair initiated a telephone call to cause Ms. Chambers not to testify. This was ultimately proven false.

(b) Mr. Davis knew or must have known that Ms. Chambers would testify that "Blair did not tell her not to testify" in State v. Chung case. He led Mr. Blair to choose a defense with the intention of altering the Bar's case on February 15, 1984, at the last minute after Mr. Blair's Maryland witnesses were subpoenaed to come to West Virginia the next business day, that is, on February 17, 1984, to defend the first complaint; when it was too late to backtrack or subpoena new witnesses and after three (3) years of fading evidence, memory and inordinate delay.

(c) Mr. Davis refused to submit desperately sought discovery by

Mr. Blair. He never allowed Mr. Blair to see Ms. Jarrell's letter of September 1, 1981, or any other exonerating material.

(d) Mr. Davis never truly advised Mr. Blair in any document what the Bar would intent to prove or that Ms. Chambers would allege she called Blair.

(e) Mr. Davis knew Ms. Chambers merely sought reimbursement of money yet he exaggerated a case on obstruction of justice against Mr. Blair.

(f) Mr. Davis falsified the existence of a doctor's excuse to avoid Ms. Jarrell's travelling with Ms. Chambers to testify in West Virginia. See D.C. Bar Counsel's letter of March 16, 1984, regarding unavailability of Ms. Jarrell's medical excuse. Hence, Deborah Jarrell should have been made to

come and testify in West Virginia. NEWLY DISCOVERED EVIDENCE ON DECEMBER 3, 1984, IN D.C. BAR COUNSEL'S OFFICE.

(g) Mr. Davis failed to submit the November 4, 1981, letter from the Maryland Bar indicating all of Mr. Blair's pro hac vice appearance "were in order" until after the Febuary 1984 Bar hearing.

(h) Mr. Davis precluded Mr. Blair from submitting evidence or testifying as to pro hac vice matters including Ms. Chambers, (LEC v. Blair, TR. 52-53) but later lead the Court to believe that Attorney Blair was making continuous pro hac vice appearances in Maryland when the record reflects that his last such pro hac vice appearance was in 1981.

(i) Mr. Davis wrote Charlie King on December 1, 1983, and submitted a list of questions to which Mr. Davis

directed and expected Mr. King to answer in deposition, but D.C. Bar Counsel Shipp refused to ask King such questions as they were improper based on Mr. Shipp's own experience as a prosecutor or practitioner for seven (7) years prior to his Bar Counsel job.

(j) Mr. Davis' office requested Mr. King not to sign his own depositions. Mr. Davis again recklessly defamed Mr. Blair on November 29, 1983, by falsifying and fabricating Ms. Chambers allegations, and is guilty of prosecutorial misconduct and abuse, when he wrote to D.C. Bar Counsel as follows:

> "As you can see from the charges, it is alleged [he does not say by whom] that on February 9, 1981, Respondent Blair called his client Mary Chambers at work and asked her not to obey a subpoena to a criminal trial of another of his clients the next day." [This is simply not true; neither was it proven].

speedy trial; vendetta; harassment and race discrimination. Mr. Davis filed a Motion to Limit Discovery and the Committee granted his Motion which totally prohibited disclosure or discovery. Under similar circumstances the West Virginia Supreme Court in McGraw, Id. ruled in favor of the Honorable Justice Darrell McGraw.

Several examples of questions which must or should be answered by Bar Counsel Davis are as follows:

(a) Why did you make up such a false complaint, knowing full well that no Bar witness had alleged such a thing.

(b) Did you develope an intense bias or racial attitude toward Mr. Blair which clouded your sense of reason, fairness and objectivity.

(c) Did the four (4) page

complaint filed against you by Mr. Blair in December, 1981, cause you to fabricate this complaint or exaggerate it beyond possibility for factual proof.

(d) Did you conspire with Prosecutor Hamstead or leak information to or instruct Mr. Hamstead to trump up charges against Mr. Blair in State v. Porter (two intimidation case) for which Mr. Blair was ultimately acquitted. See Mr. Davis' letter to The Chief Justice of The West Virginia Court of Appeals dated July 18, 1983, where he (without being asked) refers to Mr. Blair's ethical complaint against him in the Chamber's case. Is it not fair to conclude that Mr. Davis had the propensity to leak such matters to Prosecutor Hamstead which induced him to falsely prosecute Mr. Blair for the purpose of strengthening the frivolous Chambers complaint? See Mr. Davis'

letter of December 20, 1983, reflecting a meeting..."on or before October 12, 1982"..., that is, at least three (3) days before Mr. Blair's indictment between Mr. Davis and Mr. Hamstead.

(e) Why did you not reschedule the deposition of Deborah Jarrell due to insufficent notice to Mr. Blair.

(f) Where you trying to get the West Virginia Bar to publicly express an adverse ruling against Mr. Blair in time for Mr. Blair's second trial where he was accused by Rell and Carter, but was ultimately acquitted.

(g) Why did you hold a deposition for Deborah Jarrell, a Maryland resident, in D.C. Bar Counsel's office, when the entire matter allegedly involved Maryland Bar action, if not for the purpose of defaming Mr. Blair. Was it not because Maryland Bar had given

Mr. Blair a "clean bill of health". See newly discovered letter from Maryland Bar Counsel Calhoun dated November 4, 1981.

SYNOPSIS OF PROSECUTORIAL ABUSE

(a) Mr. Davis held back significant discoverable or Jenck material from Mr. Blair.

(b) Mr. Davis falsely presented material to D.C. Bar Counsel and witnesses to induce their cooperation for the purpose of falsely prosecuting Mr. Blair for the purpose of disbarring or suspending Mr. Blair's license to practice law.

(c) Mr. Davis built a case against Mr. Blair which was false *in initio* or in the alternative grossly misleading such that Mr. Blair had no choice but to deny and defend as he did.

(d) Mr. Blair was correct in his denial of the West Virginia Bar's

first and second complaint (amended version) as the facts now show the substance of the complaint to be false in both count one and count two.

(e) Mr. Davis did engage in a conspiracy with Braun Hamstead, Prosecuting Attorney for Jefferson County, West Virginia, to falsely and unlawfully indict and prosecute Mr. Blair because of Mr. Blair's ethical complaint against him in December, 1981, and [because Mr. Blair is a black attorney who asserts the Constitutional guarantees in trial].

(f) Mr. Blair was denied due process of law when Mr. Davis requested premission to cancel Ms. Jarrell's deposition, then held the deposition without adequate notice to Mr. Blair who lost his 6th Amendment "right to confront witnesses against him". Hence,

Mr. Davis' misconduct caused a serious denial of due process which substantially prejudiced Mr. Blair.

(g) Mr. Davis never did substantiate his claimed Doctor's excuse for Deborah Jarrell. She should have been made to appear before the West Virginia Tribunal to allow them to assess her lack of credibility, her conflicting testimony and her lack of veracity under direct and cross-examination; otherwise her Deposition was inadmissable.

(h) The existance of two criminal indictments and pending criminal trial hanging over Mr. Blair's head on Febuary 17, 1984, were sufficiently incriminating or prejudicial to permit him to invoke the 5th Amendment. Spevack v. Klein, 385 U.S. 511 (1967).

(i) The substantial variation between the essence of the West Virginia

Bar's complaint and the evidence induced or received at the Bar hearing on Febuary 17 and 18, 1984, was sufficient to justify Mr. Blair's silence as the evidence and case appeared insufficient for a finding by preponderance of the evidence particularly where the evidence was procured by Bar Counsel Davis to further the conspiracy of State v. Blair, promoted for ulterior reasons having little to do which Ms. Chambers basic complaint seeking half of her money back. Mr. Davis was bent on disbarring or suspending Mr. Blair without just cause and in violation of the law. In Re Buffalo, 390 U.S. 544 (1968) 42 U.S.C.§§ 1981, 1983 and 1985.

(j) Mr. Blair should have been permitted to testify as to the case of State v. Chung and his involvement as pro hac vice. Since both Mr. Davis and

the three-man tribunal disallowed such evidence (Tr. 52), it is unfair for Bar Counsel to lead the Court into assume erroneous matters which can now be disproven in Mr. Blair's favor with newly discovered evidence from D.C. Bar Counsel's office, the Maryland Bar Counsel's office and the State v. Chung file. See Maryland Rule 20. See also, Maryland Code Ann. Discipline-Attorneys Rule BVI.

It is clear that West Virginia Bar Counsel Davis' preparation of this case was grossly improper and matters were fabricated to mislead Attorney Blair due to Mr. Davis' racial prejudice; out of anger; spite; revenge and racism. 42 U.S.C. §1985. See also Elliott v. Perez, 561 F.Supp. 1325 (1983).

It is unclear, at this point, the extent to which prosecutorial abuse and tortious conduct of West Virginia Bar

Counsel may be attributable to D.C. Bar Counsel. After all D.C. Bar Counsel was authorized by Former West Virginia Legal Ethics Chairman John O'Kizer, to take these Depositions of Charlie King and Deborah Jarrell in the District of Columbia. It is clear that D.C. Bar Counsel had serious questions about the propriety of Mr. Davis's conduct. Mr. Shipp had the complaint, letters and depositions. D.C. Bar Counsel knew or should have known about the inherent problems and falsehood of this case, yet he never sought to contact Mr. Blair. He never wrote any letter exonerating Mr. Blair. He never wrote any letter to the West Virginia Bar or Court objecting to Mr. Davis' and Mr. Rogers' improper activities regarding this case. Finally, the extent to which race motivated the unconstitutional actions

of Bar Counsel remain seriously in question. Taylor v. Kentucky State Bar Ass'n., 424 F.2d 478 (1970). See also Spevack v. Klein, 385 U.S. 511 (1967). For vendictive prosecution, see Thigpen v. Roberts, 82 L. Ed. 2d 23, 104 S.Ct. 2916 (1984). See also 28 U.S.C. § 1343 and 42 U.S.C. §§ 1981, 1983 and 1985.

WHEREFORE, it is respectfully requested that the West Virginia Supreme Court of Appeals:

(a) Permit oral argument on this matter;

(b) Reverse the six (6) months suspension and conditions placed against Mr. Blair's license;

(c) Dismiss the matter with prejudice;

(d) Permit the matter to be reheard and allow Mr. Blair to testify now that the criminal restrictions have been removed which did impede Mr. Blair

form testify and caused him to relying on his 5th Amendment Rights;

(e) Make a prompt ruling on this matter brought for newly discovered evidence such that Mr. Blair's granted right to file Writ of Certiorari is not jeopardized with respect to the filing date of January 15, 1985.

(f) Make whatever ruling that is fair and just which will not impede, prevent or restrict Mr. Blair from practicing law or pursuing any action to clear his name.

Respectfully submitted,[2]

Walter Lloyd Blair, pro se
BLAIR & ASSOCIATES
Professional Building, Suite 2A
114 West Washington Street
Charles Town, West Virginia 25414
(304) 725-9736

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[2] Petitioner's Motion and the above Memorandum were served on the Respondent/Bar Counsel and Clerk of court below on December 20, 1984, by Federal Express.

IN THE SUPREME COURT OF APPEALS
FOR THE
STATE OF WEST VIRGINIA

LEGAL ETHICS COMMITTEE,
Petitioner,

v. No.: 16368

WALTER LLOYD BLAIR,
Respondent.

ADDENDUM TO
SECOND MOTION FOR RECONSIDERATION
TO DISMISS; OR IN THE ALTERNATIVE
TO GRANT A NEW HEARING PURSUANT
TO RULES 2, 5, AND 7(B), WEST VIRGINIA
SUPREME COURT RULES REGARDING
NEWLY DISCOVERED EVIDENCE

Comes Now, Respondent, Walter Lloyd Blair, and moves the Court to reconsider the suspension and conditions placed on his license pursuant to the West Virginia State Bar's three (3) recontructed complaints on which the Court ruled on October 17, 1984, against Mr. Blair and ordered a six (6) month suspension followed by three (3) serious restrictions for the reason reflected in

this addendum, regarding Bar Counsel's apparent consternation, guilt and objection to the Court's ruling by his letter to Respondent dated October 26, 1984, as follows:

> In all candor, the idea of supervised practice was the idea of the Supreme Court of appeals and I have no way of knowing exactly what they had in mind with regard to the details of the three-year supervision period. My advice to the Committee on Legal Ethics will be to do the best they can with regard to a review of those supervising lawyers nominated by you. While probationary practice is known in some other jurisdictions we do not have rules or experience concerning it, so the Committee and State Bar will have to handle each issue as well as it can as each issue arises, looking to Article VI of the By-Laws and Justice Neeley's opinion in your case for guidance. (Emphasis added).

This confession by Bar Counsel Davis is false and misleading since he is well aware that he and the Tribunal precluded certain testimony by Respondent on the

subject of Respondent's practice, his pro hac vice appearances and he is well aware that the Court was relying on theh Bar's case when the Court ruled. (Tr. 52).

Bar Counsel is well aware that he anad Prosecutor Hamstead were in league together in the false criminal charges against Respondent which precluded Respondent's testimony at the Bar Hearing of February 17 and 18, 19184.

If Mr. Davis realized that he has caused the Court to make an error, then he is ethically and duty-bound to formally advise the Court; he has not. (See the Bar Transcript and brief).

WHEREFORE, in view of all Post-Opinion motions and pleadings, it is respectfully requested that the suspension and restrictions placed on Attorney Blair's license to practice law

be reversed and dismissed with prejudice.

Walter Lloyd Blair, pro se

CERTIFICATE OF SERVICE(FN 3)

I do hereby certify that I have on this 4th day of January, 1985, served a copy of the foregoing pleading on counsel for all parties and West Virginia Bar by mailing tne same by United States Mail, properly addressed, and first class postage, prepaid.

(Served by Federal Express)

EXCERPTS from Mr. Blair's brief filed on August 15, 19894, in the Court below reflecting issues raised as follows:

(1) Whether the West Virginia Bar lacks subject matter jurisdiction over a Maryland complaint where the West Virginia attorney appeared pro hac vice with leave of court and where the Maryland Bar rejects the Maryland Complaint;

(2) Whether res judicata attaches where the state of original jurisdiction reviews and rejects the complaint;

(3) Whether laches, lack of diligence (or speedy trial) and inordinate delay coupled with prejudice to the accused mandates dismissal of a complaint;

(4) Whether Bar Counsel and L.E.C. abused their discretion by failing to

dismiss the ethics complaint against the attorney particularly where the adverse ruling appears arbitrary and capricious coupled with disparate treatment; [never addressed by the court below].

(5) Whether the accused attorney in a disciplinary proceeding has the right to defend on the theory of race discrimination in violation of 42 U.S.C. §1983 and whether the refusal to allow a committee on his peers coupled with the denial to permit him to call hostile witnesses and obtain documents via subpoena duces tecum, constitute denial of due process which will reverse an adverse finding by the West Virginia State Bar L.E.C.; [Never addressed by the court below].

(6) Whether the West Virginia L.E.C. must prove the substantive allegations in its complaint by the preponderance of evidence (i.e., clear

and convincing evidence) before adverse disciplinary action against an attorney can be taken; and

(7) Whether the West Virginia State Bar's: (a) refusal to allow the accused attorney an opportunity to participate in deposition in Washington, D.C. on a Maryland Complaint; (b) Amending L.E.C. Complaint one (1) day before formal hearing which destroyed the attorney's alibi; and (c) allowing L.E.C.'s cheif witness to rehabilitate her complaint after she was excused after her testimony by the tribunal, violated the attorney's right to procedural due process.

EXCERPT from Mr. Blair's brief to the court below filed August 15, 1984, on page XIII reflects as follows:

> The Committee refused Attorney Blair's subpoena duces tecum on Messrs. Kiser, Davis and Rogers (Tr.p.8) and refused to

> follow its own rules (an accused attorney...shall have the right to have summons and subpoenas issued in his behalf...§§16, 9, Art. VI, West Virginia State Bar Rules) in violation of the State and Federal Constitutions.

EXCERPT from Mr. Blair's Brief to the Court below filed August 15, 1984, on page XIV reflects as follows:

Attorney Blair denied the allegations [in the W.Va. Bar's Complaint] and demanded strict proof via clear and convincing evidence by the preponderance of evidence pursuant to LEC v. Pence, W.V. and the U.S. Constitutions. (Tr.p.26)

The L.E.C. formal complaint drafted by Bar Chairman Kiser and Counsel Davis, was so inadequately, untimely, incompetently and abusively written that perfect defenses existed on the basis of:

A. Lack of subject matter

jurisdiction (tr.p.37 Motion denied sua sponte;

B. Res Judicata (Tr.p.35 Motion denied sua sponte);

C. Laches, lack of diligence and speedy hearing (tr.p. 37 Motion denied sua sponte;

D. Racial discrimination and systematic racism;

E. Retaliatory and vendetta prosecution;

F. Arbitrary and capricious prosecution; and

G. Denial of Due Process of Law, State and Federal Constitutions.

EXCERPT, Id. at 30:

ISSUE V: Whether the accused attorney in a disciplinary proceeding has the right to defend on the theory of race discrimination in violation of 42 U.S.C. §1983 and whether the refusal to allow a committee on his peers coupled with the denial to permit him to call hostile witnesses and obtain documents via subpoena duces tecum, constitute

BEST AVAILABLE COPY

denial of due process which will reverse an adverse finding by the West Virginia State Bar L.E.C.

The West Virginia State Bar Association and the Legal Ethics Comittee [represented by Bar Counsel] are considered agencies [and agents] of the state. The civil rights act of 1871, 42 U.S.C. §1983 was established primarily to protect black citizens (protected class) against racial discrimination by persons acting, "under color of the state's statute, ordinance, and regulation..." in areas of employment involving: Police, Chicano Police Officers Ass'n v. Stover, 526 F.2d 431, 11 FED 1056 (10 cir. 1975); fire departments, Carter v. Gallager, 452 F.2d 315, 3 FED 900 (8 cir. 1971); Public schools, colleges and universitys, Chance v. Board of Examiners, 458 F.2d 1167, 4 FEP 596 (2 cir. 1972); and state agencys, Johnson v. Louisanna

State Employment Service, 301 F. Supp. 675, 1 FEP 875 (W.D.La. 1968), inter alia. It is clear that 42 U.S.C. §1983 is applicable to the states by its language and through the Fourteenth Amendment of the United States constitution.

The license to practice law in the state of West Virginia is considered a significant property interest for which due process of law is mandatory before such license can be suspended or revoked. Such clear racial attacks against Attorney Blair [reflected in his four and one half (4 1/2) years of practice in West Virginia] coupled with the allegation that Bar Counsel created much of the problem by leaking confidential information justifies the need for subpoena duces tecum to obtain proof for his defense. McGraw v.

Judicial Review Board, 264 S.E.2d 168 (1980). In Giddens v. State Bar, 28 Cal. 3rd 730 (1981), it was held that the accused attorney is entitled to procedural due process at the hearing. This guarantees proper notice, right to cross-examination, a right to be heard and to introduce evidence.

The complaint filed by Bar Counsel Davis against Attorney Blair on December 12, 1983, (which was so improperly written it had to be amended) reflects that the instant complaint was instituted in "bad faith" and for the purpose of harassment and punishment of the attorney for challenging Bar Counsel. See Taylor v. Kentucky State Bar, 424 F.2d 848 (6th Cir. 1970); 9 A.L.R. Fed. 422 (1971), where Petitioner Taylor was allowed to file a federal civil rights action to enjoin the State Bar proceedings against him under 42

U.S.C. § 1983 in Federal Court.

A historic perspective as to the intense racism to which black people in America have been subjected justifies judicial scrutiny particularly when a black attorney raises race discrimination and presents substanital evidence thereof. Dred Scott v. Sanford, 115 Mo. 576 (1852). [This issue was not responded to in the court below].

Hence, it should come to no one as a surprise that presently black citizens are still being victimized in every and all walks of American society notwithstanding gains made in the area of education, inter alia as a result of cases such as Brown v. Board of Education, 347 U.S. 483 (1954), a land mark case in the sphere of civil rights.